

SUMMARY ANALYSIS OF AMENDED BILL

Author: Coto Analyst: Deborah Barrett Bill Number: AB 2371
 Related Bills: See Prior Analysis Telephone: 845-4301 Amended Date: April 17, 2008
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: FTB Voter Registration

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

X AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as amended April 2, 2008.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

X REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 21, 2008, STILL APPLIES.

OTHER – See comments below.

SUMMARY

This bill would allow an eligible California resident to register to vote through the filing of a state income tax return.

This bill would make changes in the Elections and Motor Vehicle Codes regarding voter registration that do not impact this department and are not discussed in this analysis.

SUMMARY OF AMENDMENTS

The April 17, 2008, amendments would do the following:

- Require Franchise Tax Board (FTB) to transmit to the county elections official a duplicate of the tax filing form under specific conditions, and
- Prohibit FTB from sharing with another person or agency any of the information obtained on the tax filing form relating to voter registration except for purposes directly related to voter registration.

Board Position:

<u> </u> S	<u> </u> NA	<u> </u> NP
<u> </u> SA	<u> </u> O	<u> </u> NAR
<u> </u> N	<u> </u> OUA	<u> X </u> PENDING

Legislative Director

Date

Brian Putler

5/2/08

The April 17, 2008, amendments have raised new "Implementation Considerations." The amendments did not resolve the previous "Implementation Considerations" identified in the department's analysis of the bill as amended April 2, 2008, which are repeated here for convenience. The "Program Background" discussion is added, and the "This Bill" discussion has been revised. The remainder of the department's analysis of the bill as introduced February 21, 2008, still applies.

POSITION

Pending.

THIS BILL

This bill would allow a qualified person not already registered to vote to register by filing a personal income tax form. This registration method would apply for persons with no party affiliation and would allow persons to decline to be registered. Additionally, if the person filing a tax return is not over 18 years of age, but will be by the next election, he or she would be registered automatically upon his or her birthday.

This bill would require FTB to contain the following on its tax filing forms:

- A method to request information that would establish whether the taxpayer satisfied the requirements to be registered to vote.
- A method by which the taxpayer shall indicate whether he or she is registered to vote.
- A statement that, if the requirements are satisfied, the taxpayer shall be registered to vote unless the taxpayer declines to be registered to vote or has indicated that he or she is already registered to vote.
- A method by which the taxpayer may decline to be registered to vote.
- Any other information required by state or federal law for a person to be registered to vote.

FTB would be required to forward a duplicate of the form that registers a person to vote to the county where the person named on the form resides, unless any of the following apply:

- The taxpayer declines to be registered.
- The taxpayer indicates that he or she is already registered to vote.
- The taxpayer does not fill out the form in its entirety.

This bill would require that except where a duty imposed by law requires otherwise, FTB must do the following:

- Comply with applicable federal and state laws relating to privacy and confidentiality of the information collected,
- Collect only the information necessary to implement the requirements of this bill, and
- Prohibit the sharing of information collected with another agency or person except for a purpose directly related to voter registration.

The county election official would examine the document and if it is determined that the document indicates the person satisfies the requirements to be registered to vote, the document would be treated as a completed affidavit of registration by the county election official. The document must be received by FTB no later than 15 days before the next election to be effective. The document would be effective for purposes of verifying signatures on petitions, initiatives, referendums, absentee voter applications, or other election papers.

The bill would direct FTB to confer with the Secretary of State and develop a Personal Income Tax filing form in compliance with this bill no later than July 1, 2009.

Program Background

Under the existing Strategic Tax Partnership, FTB provides online access to state income tax information, including information provided on tax returns, to the Board of Equalization (BOE) and the Employment Development Department (EDD). This reciprocal data sharing arrangement assists the tax agencies in their respective responsibilities to administer the state's income tax, sales and use tax, and employment tax programs.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The bill would require "tax filing forms" to be revised to include voter registration related information. Because FTB produces hundreds of forms that could be included in the term "tax filing forms," it is recommended that the language be changed to refer to "state income tax returns" to make it clear which forms that author intends to be revised.

The bill would require FTB to provide the election officials of each county with a copy of the tax return for tax filers who opt to register to vote on their tax return. Providing confidential taxpayer information to the counties for purposes other than tax administration would be a violation of disclosure laws contained within the Revenue and Taxation Code (R&TC). If the voter registration information collected through the tax return could be placed on a separate schedule, the schedule could be separated from the return and only the relevant voter registration information would be disclosed to the county election officials.

Exceptions to the general law prohibiting disclosure of taxpayer information are contained in a single Article of the R&TC. Locating all of the exceptions in one place allows taxpayers to understand every circumstance in which their confidential tax data may be disclosed. Accordingly, it is recommended that express language referencing the disclosure of tax return information for purposes of voter registration—an additional exception to confidentiality--be added to the R&TC.

Approximately 60% of California residents now file tax returns electronically and this percentage increases each year. Because electronic returns do not contain signatures that can be used for voter signature verification purposes, it is not clear how the author intends to use the electronically filed income tax return as a practical voter registration alternative. Based on the April 17, 2008, amendments, any unsigned document would be incomplete for purposes of voter registration and would not be forwarded to the county elections officials.

Although FTB approves the versions of income tax returns used by tax preparation software companies, FTB lacks authority to dictate to software vendors that their software contain options to provide certain information relating to voter registration. Accordingly, FTB cannot ensure that tax preparation software will incorporate the changes to the tax returns this bill would require.

Significant revisions to state income tax returns and tax return filing processes would be required by this bill. FTB would need to collect additional data on the taxpayer and spouse, and any dependents that may be eligible to register to vote. The changes required to the personal income tax return to collect this data would result in a three or more page return, creating significant costs to the department as detailed in the Fiscal Costs discussion below.

This bill would provide that registration is effective if received by FTB 15 days before an election. Ordinary processing time experienced by FTB during peak processing could result in registration information reaching county elections officials more than 15 days after receipt by FTB—and after a scheduled election.

This bill could require FTB to send duplicate copies of returns to 58 different county elections officials. In circumstances where the primary taxpayer on a return is registered, but has a spouse that would be registered through this process, the primary taxpayer's confidential tax return information would be subject to disclosure although the county elections officials have no use for that information.

Electronically filed returns are stored in a proprietary electronic format. Providing reproductions of approximately 10 million electronically filed tax returns would require that the stored electronic data be converted into a viewable format and printed to accommodate the varying technology capabilities of all 58 county elections offices.

The provisions of the bill that would prohibit the sharing of information on the return collected for purposes of voter registration would significantly impair data access agreements FTB has in place with BOE and EDD, which could result in substantial revenue losses.

Laws relating to the confidentiality of voter registration conflict with laws protecting confidentiality of tax return information. It is unclear which laws would prevail. Tax return data received from FTB can only be used for tax purposes, which is not the primary purpose of county elections officials.

This bill would allow a minor who will turn 18 by the next election to register to vote through the tax return. This feature of the bill would require FTB to monitor state, local, and municipal elections in 58 different counties to ensure that the tax returns for those taxpayers are forwarded as they become eligible. To ease administration, the author may wish to specify that any voter registration information received would be forwarded to the elections official, regardless whether that applicant is 18 or will be 18 before the next election.

LEGISLATIVE STAFF CONTACT

Legislative Analyst

Deborah Barrett

(916) 845-4301

deborah.barrett@ftb.ca.gov

Revenue Manager

Rebecca Schlussler

(916) 845-5986

rebecca.schlussler@ftb.ca.gov

Legislative Director

Brian Putler

(916) 845-6333

brian.putler@ftb.ca.gov